IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1709 OF 2004

IN CRI.APPLN. NO. 383/2000

Dilip Jagannath Ambilwade ..Applicant.

V/s.

The State of Maharashtra .. Respondent.

Shri D.J. Ambilwade for Applicant.
Shri A.S. Gadkari, APP for Respondent-State.

CORAM : A.M.KHANWILKAR, J.
DATED : 04.11.2004

PC :-

. This petition has been admitted on 19th May, 2004 by Justice Karnik, which order spells out the reasons why the court was persuaded to admit the same. It is seen from the order that the petition was admitted after hearing both the sides and going through all the averments made in the petition alongwith the documents which are placed on record. It is the case of the petitioner that the respondent had taken a conscious decision in withdrawing the prosecution launched against the petitioner. This position is reinforced by the Government Order dated 25.11.1999 and also reiterated before this court on

behalf of the respondent in the proceedings taken out by the petitioner being criminal revision application No. 383/2000 , decided on 21st January, 2002. The order passed on 21st January, 2002 by this court is placed on record at page -8 of the paper book. It is clearly noted that the learned APP, appearing for the Respondent in the said proceedings, made a statement that the government is withdrawing the prosecution. It is on that basis the revision application came to be disposed of. Relying on the said document, the petitioner asserts that since the respondent has taken a conscious decision to withdraw the prosecution launched against the petitioner but even then the petitioner is required to face the trial pending before the lower court as no formal application has been taken out before the trial court in that behalf. Inspite of the repeated opportunity granted by this court even after admitting the application on 19th May, 2004, no reply has been filed contradicting the assertions made in the petition. The assertions made in the petition are supported by the documents which are already on record. The learned APP appeared before this court submits that he is still awaiting direction/ instruction from the concerned department about the stand to be taken on behalf of the

respondent. He submits that the repeated communication has been sent to the concerned officer, but no instructions are forthcoming. As mentioned earlier, although repeated opportunity has been given to the respondent, no reply affidavit has been filed on record. In this view of the matter, this court has no option but to proceed on the basis that the averments made in the application have remained un-controverted and if this is so, the petition ought to succeed. Accordingly, this petition is allowed in terms of a prayer clause (A), which reads thus :-

> (A) The present Application may kindly be allowed and the Respondents may be directed to withdraw criminal case No. 4/98 and prosecution against the petitioner.

. Ordered accordingly.

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